

(iv) The offset or credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state;

(3) An agency must have adequate employee bonding or fidelity insurance. The amount of such bonding or fidelity shall be 50 percent of the surety bond amount calculated prior to any offset/credit that the agency may receive for state bonds. At a minimum, the employee bond or fidelity insurance must be \$5,000;

(4) An agency may receive an offset or credit in the employee bond/fidelity insurance amount as follows:

(i) The agency has obtained an employee bond or fidelity insurance in compliance with the requirements of a state, commonwealth, district, or territory in which the agency seeks approval from the United States Trustee;

(ii) The deductible cannot exceed a reasonable amount considering the financial resources of the agency; and

(iii) The offset/credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state;

(5) If the agency has contracted with another entity (“service provider”) to administer any part of its debt management plan, the service provider is approved by the United States Trustee as a nonprofit budget and credit counseling agency, or the service provider is specifically covered under the agency’s surety bond or has a surety bond in a sufficient amount to provide for the safekeeping of the agency’s client funds, and the service provider agrees in writing to allow the United States Trustee or EOUST to audit the trust accounts maintained by the service provider and to review the service provider’s internal controls and administrative procedures.

[71 FR 38078, July 5, 2006]

**§ 58.16 Procedures for inclusion on the approved list.**

(a) As used in this section the term “agency” means nonprofit budget and credit counseling agency.

(b) Each nonprofit budget and credit counseling agency seeking to be included on the list of approved agencies must complete in its entirety the application form EOUST-CC1, “Applica-

*tion for Approval as a Nonprofit Budget and Credit Counseling Agency*” (application), including all appendices, and submit it at the address indicated on the application.

(c) The application must be executed under penalty of perjury in a manner specified in 28 U.S.C. 1746.

(d) An application may not be accepted by the EOUST unless it is complete and has been signed by an agency representative who is authorized to sign on behalf of the agency. An application that is incomplete or has been altered, amended, or changed in any respect from the application at the United States Trustee Program’s Web site may not be accepted by the EOUST. Such an application will be denied, and no further action will be taken on the request for inclusion on the approved list until a new application is submitted that corrects the defects.

(e) The EOUST will not accept an application submitted by an agency on behalf of another individual or group of individuals. Each agency that desires to be included on the approved list must submit its own application.

(f) Each agency must submit a new application 45 to 60 days before expiration of its six month probationary period or annual period to be considered for annual approval. After the application is completed and signed, the originals must be mailed to the EOUST, Credit Counseling Application Processing, at the address indicated on the application. The EOUST will not accept a photocopy or facsimile of the application.

(g) An agency whose name appears on the list incorrectly may submit a written request that the name be corrected. An agency whose name appears on the list may submit a written request that its name be removed from the list.

(h) By submitting an application, the agency expressly consents to the release and disclosure of the agency’s name on the approved list and the publication of the agency’s contact information.

(i) **Obligation to Update Information:**  
(1) The agency has a continuing duty to promptly notify the EOUST of any circumstances that would materially alter or change a response to any section of the application, including but

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not limited to, changes in the location of primary or satellite business office(s); the principal contact person; name or fictitious name under which the agency does business; management, including the board of directors; a merger or consolidation with another entity; and the banks or financial institutions used by the agency;

(2) The agency shall request approval by amendment to its application, and prior to occurrence of the following changes:

(i) Cancellation or change in amount of the surety bond or employee fidelity bond or insurance;

(ii) The engagement of a service provider to provide counseling services to administer debt management plans, or to otherwise control or account for client funds;

(iii) An increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's policy for the reduction or waiver of fees;

(iv) Expansion into additional judicial districts or withdrawal from judicial districts where the agency is approved; and

(v) Method of delivery or type of counseling services;

(3) The agency must include with any amendment to its application, a newly executed "certification and signature;"

(4) The agency will notify the EOUST immediately upon the occurrence of any of the below noted events:

(i) Cancellation or termination of tax exempt status of the agency by the Internal Revenue Service;

(ii) Cessation of business of the agency or of any office of the agency;

(iii) Termination or cancellation of any surety bond or fidelity insurance;

(iv) Any action brought against the agency by a Federal or state agency, including, but not limited to, the Federal Trade Commission, or any action against the surety bond or fidelity insurance;

(v) Any action by a state agency to suspend the license or cancel other authorization to do business;

(vi) A suspension by an accreditation organization or denial of accreditation;

(vii) Withdrawal as an approved agency; and

(viii) Change in the agency's non-profit status;

(j) An approved agency may not transfer or assign its United States Trustee approval under section 111 as a nonprofit budget and credit counseling agency to any party.

[71 FR 38078, July 5, 2006]

### **§ 58.17 Procedures for denying an application or removing an agency from the approved list, and the administrative review rights granted to denied or removed agencies.**

(a) As used in this section the term "agency" means nonprofit budget and credit counseling agency.

(b) No administrative review will be granted to any applicant that submitted an incomplete application and had its application denied due to incompleteness and failed to subsequently submit a completed application.

(c) The agency shall be notified in writing of any decision to deny the agency's application or to remove the agency from the approved list ("notice"). The notice shall state the reason(s) for the decision and shall reference any documents or communications with the agency, which were relied upon in making the denial or removal decision. If such documents or communications were not provided to the United States Trustee or the EOUST by the agency, copies of the documents or communications shall be provided with the notice. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(d) The notice shall advise the agency that the decision is final unless the agency requests in writing a review ("request for review") by the Director, Executive Office for United States Trustees ("Director"), no later than 20 calendar days from the date of issuance of the denial or removal notice. In order to be timely, a request for review must be received at the Office of the Director no later than 20 calendar days from the date of the denial or removal notice to the agency.

(e) A decision to remove an agency from the approved list shall take effect upon the expiration of an agency's time to seek review from the Director